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MIGUEL ANGEL RUIZ MATA

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(HONORABLE THOMAS J. WHELAN)

UNITED STATES OF AMERICA, Plaintiff, v. **MIGUEL ANGEL RUIZ MATA** Defendant.	Criminal No. **08 CR 2558-W** Date: October 6, 2008 Time: 2:00 p.m. **NOTICE OF MOTIONS AND MOTIONS TO:** **1) COMPEL THE PRODUCTION OF FURTHER DISCOVERY; AND** **2) GRANT THE DEFENSE LEAVE TO FILE FURTHER MOTIONS**

TO: KAREN P. HEWITT, UNITED STATES ATTORNEY, and LUELLA CALDITO, ASSISTANT UNITED STATES ATTORNEY

PLEASE TAKE NOTICE that on October 6, 2008, at 2:00 p.m., or as soon thereafter as counsel may be heard, Miguel Angel Ruiz Mata by and through his counsel, Nancy Rosenfeld, will ask this Court to enter an order granting the motions listed below.

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MOTIONS

The defendant, Miguel Angel Ruiz Mata, by and through his attorney, Nancy Rosenfeld, pursuant to the Fifth, and Sixth Amendment to the United States Constitution, the Federal Rules of Criminal Procedure 12(b)(1), 12(b)(3), and 12(b)4), and all other applicable statutes, case law and local rules, hereby moves this Court for an order to:

(1) Compel discovery/preserve evidence; and

(2) Grant the defense leave to file further motions.

These motions are based upon the instant motions and notice of motions, the attached statement of facts and memorandum of points and authorities, the attached exhibits, and any and all other materials that may come to this Court's attention at the time of the hearing on these motions.

Respectfully submitted,

Dated: August 15, 2008

/S/ Nancy Bryn Rosenfeld
NANCY BRYN ROSENFELD
Attorney for Defendant
Miguel Angel Ruiz Mata

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Dated: August 15, 2008

/S/ Nancy Bryn Rosenfeld
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Attorney for Defendant
Miguel Angel Ruiz Mata

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MIGUEL ANGEL RUIZ MATA

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(HONORABLE THOMAS J. WHELAN)

UNITED STATES OF AMERICA, Plaintiff, v. **MIGUEL ANGEL RUIZ MATA** Defendant.	Criminal No. **08 cr 2558-W** **STATEMENT OF FACTS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTIONS**

STATEMENT OF FACTS AND CASE

On April 6, 2008 an indictment was filed against MIGUEL ANGEL RUIZ MATA, charging 3 counts of violations of Title 8, United States Code, section 1324.

Prior to the filing of the indictment, the prosecution had provided some incident reports of Mr. Ruiz Mata's arrest. There has been no "fast track" offer. The reports reflect the following.

Miguel Angel Ruiz Mata, a Mexican citizen, was driving a vehicle with five or six illegal immigrants in the vehicle. (Discovery unclear at this point at to number of individuals) Agents believed that the Honda Civic Mr. Ruiz was driving was following another vehicle. Material Witness, Jesus Guzman Gallardo was in the front seat of the car. After his arrest, Mr. Ruiz was extremely cooperative with the agents, who told him his cooperation would be rewarded.

I.

THE COURT SHOULD COMPEL THE GOVERNMENT TO PRODUCE DISCOVERY AND PRESERVE EVIDENCE.

Miguel Angel Ruiz Mata makes the following discovery motion pursuant to Rule 12(b)(4) and Rule 16. This request is not limited to those items that the prosecutor has actual knowledge of, but rather includes all discovery listed below that is “in the possession, custody, or control of any federal agency participating in the same investigation of the defendant." *United States v. Bryan*, 868 F.2d 1032, 1036 (9th Cir.), cert. denied, 493 U.S. 858 (1989).

(1) Mr. Ruiz Mata’s Statements. The government must disclose: (1) copies of any written or recorded statements made by Mr. Ruiz Mata; (2) copies of any written record containing the substance of any statements made by Mr. Ruiz Mata in response to interrogation by a known government agent; and (3) the substance of any statements made by Mr. Ruiz Mata which the government intends to use, for any purpose, at trial. See Fed. R. Crim. P. 16(a)(1)(A).

Mr. Ruiz Mata specifically requests any rough notes taken by any agents of any alleged post-arrest statements. Under Federal Rule of Criminal Procedure 16, the government is specifically required to produce “that portion of *any* written record containing the substance of any relevant oral statement made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a government agent.” Id. (emphasis added). In explaining the amendment, the advisory committee notes to the 1991 amendment to Rule 16 state:

The rule now requires the prosecution, upon request, to disclose any

> written record which contains reference to a relevant oral statement by the defendant which was in response to interrogation, without regard to whether the prosecution intends to use the statement at trial. The change recognizes that the defendant has some proprietary interest in statements made during interrogation regardless of the prosecution's intent to make any use of the statements.
>
> The written record need not be a transcription or summary of the defendant's statement but must only be some written reference which would provide some means for the prosecution and defense to identify the statement.

Fed. R. Crim. P. 16 advisory committee's note.

As the plain language of the rule and the advisory committee notes make clear, five elements must be met for an item to be discoverable. First, the item must be a written record. Second, it must contain a reference to an oral statement made by the defendant. Third, the oral statement must be relevant. Fourth, the statement must be in response to interrogation by a government agent. Fifth, the defendant must know that the interrogator is a government agent. If *any* written record possesses these elements, it is discoverable.

An agent's rough notes of Mr. Ruiz Mata's statements clearly possess all five elements. First, the handwritten notes are obviously a written record. Second, they would contain references to oral statements made by Mr. Ruiz Mata. Third, Mr. Ruiz Mata's statements are certainly relevant as they directly bear on the critical events at issue in this criminal prosecution. Fourth, Mr. Ruiz Mata is only asking for notes of statements that were made in response to interrogation. Fifth, any person that interviewed Mr. Ruiz Mata after his arrest was obviously a known government agent. Thus, under the clear language of the rule, such rough notes are discoverable.

Mr. Ruiz Mata maintains that any agents' rough notes of his post-arrest statements are clearly discoverable under amended Rule 16(a)(1)(A). The plain language of the amended rule and the commentary explaining the amendment mandate such a result. It should be noted that when considering Rule 16, even before the 1991 amendment, the Ninth Circuit endorsed "the view that the defendant ought to be able to see his statement in whatever form it may have been preserved in fairness to the defendant and to discourage the practice, where it exists, of destroying original notes, after transforming them into secondary transcriptions, in order to avoid cross-examination based upon the original notes." United States v. Harris, 543 F.2d 1247, 1252 (9th Cir. 1976) (emphasis deleted).

Finally, under the third category, the government is required to disclose the substance of any "relevant oral statement made by the defendant whether before or after arrest in response to interrogation by any person then known by the defendant to be a government agent if the government intends to use that statement at trial." Fed. R. Crim. P. 16(a)(1)(A). The government's intent to use the statement at trial is read broadly -- it includes not only statements to be introduced into evidence at trial but also statements used for impeachment purposes. See Fed. R. Crim. P. 16 advisory committee's notes ("[T]he prosecution must also disclose any relevant oral statement which it intends to use at trial, without regard to whether it intends to introduce the statement. Thus, an oral statement by the defendant which would only be used for impeachment purposes would be covered by the rule."). Mr. Ruiz Mata requests that the substance of all such statements be produced immediately. Mr. Ruiz Mata asks that the Court prohibit the use at trial of any such statements that are not produced pursuant to this request. See Fed. R. Crim. P. 16(d)(2) (the court may "prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances").

(2) The Defendant's Prior Record. Mr. Ruiz Mata requests disclosure of his prior record, including any prior arrest reports, probation reports or any other documents relating to such record . He also requests any prior immigration record. See Fed. R. Crim. P. 16(a)(1)(B). Mr. Ruiz Mata further requests the

same information as it relates to any co-defendants or material witnesses.

(3) Documents and Tangible Objects. Mr. Ruiz Mata requests the opportunity to inspect, copy, and photograph all documents and tangible objects which are material to the defense or intended for use in the government's case-in-chief or were obtained from or belong to him. See Fed. R. Crim. P. 16(a)(1)(C). This request specifically includes the defendant's immigration file and any material witness' immigration files.

(4) Reports of Scientific Tests or Examinations. Mr. Ruiz Mata requests the reports of all tests and examinations which are material to the preparation of the defense or are intended for use by the government at trial. See Fed. R. Crim. P. 16(a)(1)(D). Mr. Ruiz Mata notes that no fingerprint analyses have been produced. If such tests exist, Mr. Ruiz Mata requests such discovery.

(5) Expert Witnesses. Mr. Ruiz Mata requests the name and qualifications of any person that the government intends to call as an expert witness. See Fed. R. Crim. P. 16(a)(1)(E). In addition, Mr. Ruiz Mata requests written summaries describing the bases and reasons for the expert's opinions. See id. This request specifically includes any fingerprint experts.

(6) Brady Material. Mr. Ruiz Mata requests all documents, statements, agents' reports, and tangible evidence favorable to the defendant on the issue of guilt or punishment. See Brady v. Maryland, 373 U.S. 83 (1963). Impeachment evidence falls within the definition of evidence favorable to the accused, and therefore Mr. Ruiz Mata requests disclosure of any impeachment evidence concerning any of the government's potential witnesses, including prior convictions and other evidence of criminal conduct, including immigration records. See United States v. Bagley, 473 U.S. 667 (1985); United States v. Agurs, 427 U.S. 97 (1976). In addition, Mr. Ruiz Mata requests any evidence tending to show that a prospective government witness: (I) is biased or prejudiced

against the defendant; (ii) has a motive to falsify or distort his or her testimony; (iii) is unable to perceive, remember, communicate, or tell the truth; or (iv) has used narcotics or other controlled substances, or has been an alcoholic.

(7) Request for Preservation of Evidence. Mr. Ruiz Mata specifically requests the preservation of all physical or documentary evidence that may be destroyed, lost, or otherwise put out of the possession, custody, or care of the government and which relate to the arrest or the events leading to the arrest in this case. This request includes the tape recording of any deportation proceeding relied upon by the government.

(8) Any Proposed 404(b) Evidence. "[U]pon request of the accused, the prosecution . . . shall provide reasonable notice in advance of trial . . . of the general nature" of any evidence the government proposes to introduce under Rule 404(b). Fed. R. Evid. 404(b). Mr. Ruiz Mata requests such notice at least three weeks before trial in order to allow for adequate trial preparation.

(9) Witness Addresses. Mr. Ruiz Mata requests the name and last known address of each prospective government witness. He also requests the name and last known address of every witness to the crime or crimes charged (or any of the overt acts committed in furtherance thereof) who will not be called as a government witness.

(10) Jencks Act Material. Mr. Ruiz Mata requests production in advance of trial of all material discoverable pursuant to the Jencks Act, 18 U.S.C. § 3500. Advance production will avoid needless delays at pretrial hearings and at trial. This request includes any “rough” notes taken by the agents in this case; these notes must be produced pursuant to 18 U.S.C. § 3500(e)(1). This request also includes production of transcripts of the testimony of any witness before the grand jury. See 18 U.S.C. § 3500(e)(3). Jencks statements must be produced at a suppression hearing. See Fed. R. Crim. P. 12(i) and 26.2(g). Mr. Ruiz Mata

requests production of such material before any suppression hearing in order to avoid delay at the hearing, as would be permitted pursuant to Rule 26.2(d).

(11) Informants and Cooperating Witnesses. Mr. Ruiz Mata requests disclosure of the names and addresses of all informants or cooperating witnesses used or to be used in this case. The government must disclose the informant's identity and location, as well as disclose the existence of any other percipient witness unknown or unknowable to the defense. Roviaro v. United States, 353 U.S. 52, 61-62 (1957). Mr. Ruiz Mata also requests disclosure of any information indicating bias on the part of any informant or cooperating witness. Giglio v. United States, 405 U.S. 150 (1972). Such information would include what, if any, inducements, favors, payments or threats were made to the witness to secure cooperation with the authorities.

(12) Evidence of other unlawful immigrant smuggling: Mr. Ruiz Mata requests any and all evidence upon which the government bases any claim that Mr. Ruiz Mata is involved in other smuggling behavior or has contacts with other immigrant smugglers.

(13) Residual Request. Mr. Ruiz Mata intends by this discovery motion to invoke his rights to discovery to the fullest extent possible under the Federal Rules of Criminal Procedure and the Constitution and laws of the United States. Mr. Ruiz Mata requests that the government provide him and his attorney with the above requested material sufficiently in advance of trial.

III.

THE COURT SHOULD GRANT LEAVE TO FILE FURTHER MOTIONS.

Mr. Ruiz Mata asks leave to file further motions in the event further discovery gives rise to the need for further pre-trial proceedings.

CONCLUSION

For the foregoing reasons, Mr. Ruiz Mata respectfully requests that the Court order the government to produce discovery and preserve evidence, and grant leave to file further motions.

Respectfully submitted,

Dated: August 15, 2008

/S/ Nancy Bryn Rosenfeld
Nancy Bryn Rosenfeld,
Attorney for Mr. Ruiz Mata

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Attorney for Defendant
MIGUEL ANGEL RUIZ MATA

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(HON. THOMAS J. WHELAN)

UNITED STATES OF AMERICA,	)	Case No 08 cr 2558 W
	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
	)	
v.	)	
	)	
MIGEUL ANGEL RUIZ MATA	)	
	)	
	)	
Defendant.	)	

1. I am a citizen of the United States and a resident of the County of San Diego; I am over the age of eighteen years and not a party to the within entitled action; my business address is 1168 Union Street, Suite 303, San Diego, California 92101.

2. I served the within **NOTICE OF MOTION AND MOTION FOR DISCOVERY AND FOR LEAVE TO FILE FURTHER MOTIONS** by electronic filing to be transmitted by the Clerk to the United States Attorney's Office in compliance with Electronic Case Service filing procedures.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 15th day of August 2008 at San Diego, California.

S/ Nancy Bryn Rosenfeld